

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	NO. CR-91-198-T
)	
JAMES HILL THOMAS,)	
)	
)	
Defendant.)	

ORDER


Before the court is the defendant's motion and supporting memorandum of law [Doc. No. 253] in which he seeks to vacate or set aside his sentence pursuant to 28 U. S. C. § 2255. In support of his requested relief, defendant also cites Fed. R. Civ. P. 60(b) and Fed. R. Crim. P. 52. Defendant contends that, pursuant to the United States Supreme Court decision in United States v. Booker, ___U. S. ___, 125 S. Ct. 738 (2005), he is entitled to the requested relief.

As the government notes in responding to the motion, defendant has previously sought § 2255 relief on other grounds; his motion was denied by this court on April 24, 1998. *See* Order in United States of America v. James Thomas, No. CIV-97-1694-T. Because he has previously filed a § 2255 motion, he is not permitted to file a second or successive motion until he seeks and obtains an order from the Tenth Circuit Court of Appeals authorizing this court to consider his motion. Leonard v. United States, 383 F.3d 1146, 1147 (10th Cir. 2004), *citing* 28 U. S. C. § § 2244(b)(3)(A) and 2255.

Where, as here, the defendant has not such authorization prior to filing his second § 2255 motion, this court should transfer the motion to the appellate court for a ruling. *See* Coleman v. United States, 106 F. 3d 339, 340 (10th Cir. 1997). Accordingly, this matter is transferred to the

Tenth Circuit Court of Appeals for a decision, pursuant to 28 U. S. C. § 2244(b)(3)(A), as to whether defendant may pursue the present motion in this court.

IT IS SO ORDERED this 18th of November, 2005.



RALPH G. THOMPSON
UNITED STATES DISTRICT JUDGE